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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KEIR DAVID PHILLIPS,

Defendant and Appellant.

A155570

(Lake County
Super. Ct. No. CR947070)

Keir David Phillips (defendant) appeals from judgment entered after he pleaded no contest to one count of corporal injury with a prior (Pen. Code, § 273.5, subd. (f)(1))¹ and the trial court sentenced him to five years in state prison. Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and requests that we conduct an independent review of the record. Defendant was informed of his right to file a supplemental brief and did not do so. Having independently reviewed the record, we conclude there are no issues that require further briefing and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

An information was filed on July 6, 2017, charging defendant with one count of corporal injury with a prior (§ 273.5, subd. (f)(1)). According to the probation report, Lake County deputy sheriffs responded to a report of an assault on June 6, 2017. Defendant's girlfriend stated that defendant struck her in the arm when they argued

¹ All further statutory references are to the Penal Code.

earlier in the day. They continued to argue in her car after they left home. Defendant, who was driving, repeatedly threatened to jump out of the car, and at one point, he struck his girlfriend across her face with the back of his hand. He then got out of the car and fled. His girlfriend had a bruise on her left eye and multiple bruises on her arm. She said defendant had been acting strangely in the days leading up to the incident and had injured her two or three days before the incident. She said defendant had been “high” and was violent when he used drugs.

Deputies returned to the area where the assault occurred and were able to locate defendant, who appeared to be dizzy and unable to walk. Defendant denied any physical altercation with his girlfriend and said he left the car after his girlfriend had tried to grab the steering wheel while he was driving. Deputies took defendant to the hospital, then to jail.

Defendant pleaded no contest to the charge as part of a negotiated plea agreement calling for a grant of probation. The plea agreement also contained a *Cruz* waiver (*People v. Cruz* (1988) 44 Cal.3d 1247, 1254, fn. 5), whereupon the plea would revert to an open plea in the event defendant failed to appear for sentencing. Defendant was released and ordered to report to probation within two days of release, and to return for sentencing.

Defendant failed to appear for sentencing and a bench warrant issued. He was returned to court approximately six months later, and a second case was filed charging him with failure to appear (§ 1320, subd. (b)). Defendant requested new counsel under *People v. Marsden* (1970) 2 Cal.3d 118, and when the trial court denied his request, he moved to represent himself under *Faretta v. California* (1975) 422 U.S. 806. The court declined to hear the *Faretta* request and instead declared a doubt as to defendant’s competence under section 1368. The court suspended criminal proceedings and appointed two specialists to determine defendant’s competence to proceed. When the

two specialists provided differing opinions as to defendant's competence, the court appointed a third specialist to conduct a further examination.

Thereafter, defendant again requested new counsel and also renewed his *Faretta* request. The trial court granted the *Marsden* request and continued the matter for a week. The following week, the court appointed new counsel for defendant and denied his *Faretta* request, noting that the third specialist had found defendant competent but unable to conduct his own defense. Defendant withdrew his *Faretta* request. At the next court hearing, the court found defendant competent and reinstated the criminal proceedings.

At sentencing, defense counsel informed the trial court that defendant had decided not to pursue a motion to withdraw his plea based on assurances that the district attorney would dismiss the second case charging him with failure to appear. The court noted that sentencing on the pending matter was now open to the court in light of the prior *Cruz* waiver; both parties agreed. Defendant told the court that he did not commit the underlying offense and asked for the lowest possible sentence. Defense counsel asked the court not to impose the maximum possible five-year term recommended by the probation department, and instead to place defendant on probation or impose the low or midterm sentence. Counsel noted that defendant's prior record consisted almost solely of misdemeanors, with his only felony conviction having occurred 22 years earlier in Nevada. Counsel also argued the victim did not incur significant injury and that defendant appeared to suffer from a mental condition at the time of the incident. The prosecution asked the court to follow the probation department's recommendation.

The trial court found the offense was of similar seriousness to other instances of the crime; that defendant had inflicted emotional and physical injury on the victim; that he was an active participant; and that his prior convictions, while "somewhat old," were numerous and of increasing seriousness. The court noted that defendant was on two grants of summary probation at the time of the underlying offense, and thus his ability to comply with probation was poor. While the consequences of a term of imprisonment

would be great given that this would be defendant's first prison term, the collateral consequences of such a term would be minimal because he had already incurred one prior felony conviction. Finally, the court found that defendant posed a danger to others if not imprisoned.

Defense counsel reiterated that defendant appeared to have been suffering from a mental condition, as demonstrated by the earlier competency proceedings, which was a mitigating factor. The trial court rejected the argument, finding there were no mitigating circumstances. The court denied probation and imposed the upper term of five years on the section 273.5, subdivision (f) offense. The court imposed a \$1,500 restitution fine (§ 1202.4), a corresponding stayed parole revocation fine, and various fees. The court awarded 255 actual days and 254 conduct days, for a total of 509 days of presentence custody credits. The court granted the prosecution's motion to dismiss the second case that charged defendant with failure to appear.

DISCUSSION

Appellate counsel has filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436, and asks this court to independently review the entire record to determine if it contains any issues which would, if resolved favorably to defendant, result in reversal or modification. We have examined the entire record and have found no reasonably arguable appellate issue, and we are satisfied that counsel has fully complied with her responsibilities. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

Wiseman, J.*

WE CONCUR:

Fujisaki, Acting P. J.

Petrou, J.

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* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.